relinquished prior thereto. An examination of the records shows that only one relinquishment has been made by the company since April 28, 1916, the deed having been accepted September 27, 1930.

It appears that several contemplated exchanges have recently been under consideration. This office has been informally advised that the land commissioner for the railroad company will not take the initiative with a view of making any further exchanges in case the department adheres to the practice provided for by that part of the circular above quoted. Manifestly, said act of April 28, 1904, was passed in the interest of the small holding settlers who had improved land within the grant to the railroad company, and a refusal on the part of the company to make any further exchanges will not only prevent relief being granted to the individuals concerned in the contemplated exchanges, but will in effect nullify the provisions of said act.

The purpose of the order of April 28, 1916, was to put an end to the multiplicity of field examinations of land which could have been examined at one time, had all of the relinquished base lands been exhausted in one selection. Whatever justification there may have been for such an order in 1916, it is believed that its results are more far-reaching than necessary. Furthermore, the area which is subject to such exchanges is being reduced year by year so that it may cause a hardship and considerable inconvenience to adhere to said order of April 28, 1916.

Accordingly, it is recommended that the above quoted portion of circular No. 522 of January 24, 1917, be revoked, and that in lieu thereof the following be substituted:

For any lands reconveyed by the company one or more selections may be made in lieu thereof until the entire area relinquished has been exhausted, provided: that not less than a legal subdivision of base land will be designated for any legal subdivision selected, such selection to exhaust any subdivision of base designated therefor.

C. C. MOORE, *Commissioner.*

Approved:
JOHN H. EDWARDS,
Assistant Secretary.

STATUS OF ALASKAN NATIVES

Opinion February 24, 1932

ALASKAN NATIVES—INDIANS.

The United States has never at any time recognized any tribal independence or relations among the Indians or natives of Alaska nor treated with them in any capacity.

ALASKAN NATIVES—INDIANS.

No distinction is to be made between the Indians and other natives of Alaska so far as the laws and relations of the United States are concerned and the question as to whether the Eskimos and other natives are of Indian origin or not is immaterial in that respect.

ALASKAN NATIVES—INDIANS—CITIZENSHIP.

The natives referred to in the treaty of March 30, 1867, between the United States and Russia, are entitled to the benefit of and are subject to the general laws and regulations governing the Indians of the United States to the same extent as are the Indian tribes within the territorial limits of the United States, including the right of citizenship accorded by the act of June 2, 1924.

SECRETARY OF THE INTERIOR—ALASKAN NATIVES—INDIANS.

The inherent power conferred upon the Secretary of the Interior by section 441, Revised Statutes, to supervise the public business relating to the Indians includes the supervision over reservations in Alaska created in the interest of the aboriginal natives of that Territory.

FINNEY, *Solicitor:*

You [Secretary of the Interior] have requested my opinion on the legal status of the natives of Alaska—Eskimos, Aleuts, Indians, *et al.*

Alaska was ceded to the United States by Russia under the treaty of March 30, 1867 (15 Stat. 539). Article III of the treaty provides—

> The inhabitants of the ceded territory, * * * if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property, and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

An opinion by the Solicitor of this department under date of May 18, 1923 (49 L. D. 592), sets forth the following (p. 594):

> In the beginning, and for a long time after the cession of this Territory Congress took no particular notice of these natives; has never undertaken to hamper their individual movements; confine them to a locality or reservation, or to place them under the immediate control of its officers, as has been the case with the American Indians; and no special provision was made for their support and education until comparatively recently. And in the earlier days it was repeatedly held by the courts and the Attorney General that these natives did not bear the same relation to our Government, in many respects, that was borne by the American Indians. (16 Ops. Atty. Gen. 141; 18 id., 139); *United States* v. *Ferueta Seveloff* (2 Sawyer U. S. 311); *Hugh Waters* v. *James B. Campbell* (4 Sawyer U. S. 121); *John Brady et al.* (19 L. D. 323).
>
> With the exception of the act of March 3, 1891 (26 Stat. 1095, 1101), which set apart the Annette Islands as a reservation for the use of the Metlakahtlans, a band of British Columbian natives who immigrated into Alaska in a body, and also except the authorization given to the Secretary of the Interior to make

reservations for landing places for the canoes and boats of the natives, Congress has not created or directly authorized the creation of reservations of any other character for them.

Later, however, Congress began to directly recognize these natives as being, to a very considerable extent at least, under our Government's guardianship and enacted laws which protected them in the possession of the lands they occupied; made provision for the allotment of lands to them in severalty, similar to those made to the American Indians; gave them special hunting, fishing, and other particular privileges to enable them to support themselves, and supplied them with reindeer and instructions as to their propagation. Congress has also supplied funds to give these natives medical and hospital treatment and finally made and is still making extensive appropriations to defray the expenses of both their education and *their support.*

Not only has Congress in this manner treated these natives as being wards of the Government but they have been repeatedly so recognized by the courts. See *Alaska Pacific Fisheries* v. *United States* (248 U. S. 78); *United States* v. *Berrigan et al.* (2 Alaska Reports, 442); *United States* v. *Cadzow et al.* (5 id. 125), and the unpublished decision of the District Court of Alaska, Division No. 1, in the case of *Territory of Alaska* v. *Annette Islands Packing Company et al.*, rendered June 15, 1922.

From this it will be seen that these natives are now unquestionably considered and treated as being under the guardianship and protection of the Federal Government, at least to such an extent as to bring them within the spirit, if not within the exact letter, of the laws relative to American Indians; and this conclusion is supported by the fact that in creating the territorial government of Alaska and vesting that Territory with the powers of legislation and control over its internal affairs, including public schools, Congress expressly excluded from that legislation and control the schools maintained for the natives and declared that such schools should continue to remain under the control of the Secretary of the Interior.

Any change that may have occurred in the original attitude of the United States towards the natives of Alaska is reflected in subsequent acts of Congress which were invariably intended to be in their interest and for their benefit, no distinction being made as to any particular natives.

Some disposition has been shown to make a distinction between the Indians of Alaska and other natives, particularly the Eskimos. It has been asserted by ethnologists that the Eskimos are not of Indian but more likely are of Manchurian and Chinese origin. After the Indians, the Eskimos of Alaska are probably the most advanced of the natives and for this reason these two races are best known and are more frequently referred to than the other natives such as the Aleuts, Athapascans, Tlinkets, Hydahs and other natives of indigenous race inhabiting the Territory of Alaska. The Eskimos are said to know nothing of their early predecessors. The origin of the natives of Alaska will possibly some day become known, but whether that comes to pass or not the fact is that they are all wards of the Nation and are treated in material respects the same as are the aboriginal tribes of the United States.

The act of March 3, 1899 (30 Stat. 1253), defining the penal and criminal laws of the United States relating to the District of Alaska provides in section 142 of Chap. 8 thereof, in the matter of selling liquor or firearms to Indians, as follows (p. 1274):

> * * * That the term "Indian" in this Act shall be so construed as to include the aboriginal races inhabiting Alaska when annexed to the United States, and their descendants of the whole or half blood.

The above provision was amended by the act of February 6, 1909 (35 Stat. 600, 603), by adding after the words "half blood"—"who have not become citizens of the United States." This provision loses whatever significance it may have had if the act of June 2, 1924 (43 Stat. 253), declaring "all noncitizen Indians born within the territorial limits of the United States" to be citizens of the United States, is applicable to the natives of Alaska.

In the case of *United States* v. *Lynch* (7 Alaska Reports 568, 572), referring to article III of the treaty of cession between Russia and the United States, the court held—

> Under this treaty the Tlinket tribe became subject to such rules and regulations as the United States may thereafter adopt as to the native Indians of the United States. Therefore, by the provisions of the treaty, the Indians of the Tlinket tribe became citizens of the United States, in common with the native Indian tribes of the United States, under the Act of June 2, 1924 (8 USCA Sec. 3), which provided that all noncitizen Indians born within the territorial limits of the United States, shall be citizens and that the granting of citizenship shall not, in any manner, impair or otherwise affect the right of any Indian to tribal or other property.

Demurrer in the Lynch case was overruled (7 Alaska Reports 643); see also case of *Rassmussen* v. *United States* (197 U. S. 516).

As Indians of Alaska are within the category of natives of Alaska and as the term "Indian" is to be so construed as to include the aboriginal races inhabiting Alaska, the ruling of the court in the *Lynch case* would seem to be equally applicable to all other natives of that Territory.

Reference to the provisions of certain acts will give a definite idea of the extent to which the natives of Alaska have been recognized by the Congress as well as show the similarity of their treatment to that accorded the Indians of the United States. In the first place, the treaty between Russia and the United States after providing that the civilized native tribes "shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States and shall be maintained and protected in the free enjoyment of their liberty, property, and religion," further provides: "The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of *that country*." [Italics supplied.]

The Indians, Eskimos, Aleuts and other natives of Alaska are therefore the wards of the Nation the same as are the Indians inhabiting the States. *In re Sah Quah* (31 Fed. 327), wherein it was held (p. 329)—

> * * * The United States has at no time recognized any tribal independence or relations among these Indians, has never treated with them in any capacity, but from every act of Congress in relation to the people of this territory it is clearly inferable that they have been and now are regarded as dependent subjects, amenable to the penal laws of the United States, and subject to the jurisdiction of its courts. * * * They are practically in a state of pupilage, and sustain a relation to the United States similar to that of a ward to a guardian. * * *."

In section 13 of the act of May 17, 1884 (23 Stat. 24, 27), entitled "An Act providing a civil Government for Alaska" the Secretary of the Interior is authorized to make needful and proper provision for the education of the children of school age in the Territory of Alaska "*without reference to race*, until such time as permanent provisions shall be made for the same." [Italics supplied.]

A similar provision is contained in the act of June 6, 1900 (31 Stat. 321, 330). This act was amended by the act of March 3, 1901 (31 Stat. 1438), by providing that 50 per cent of all license money collected on business carried on outside incorporated towns in the District of Alaska should be used by the Secretary of the Interior in his discretion and under his direction for the support of schools outside incorporated towns. All schools were supported by annual appropriations made by Congress up to June 30, 1901. Thereafter, all schools outside incorporated towns remained under the supervision of the Secretary of the Interior and were supported by the license money referred to, until January 27, 1905.

The act of January 27, 1905 (33 Stat. 616), entitled "An Act to provide for the construction and maintenance of roads, the establishment and maintenance of schools, and the care and support of insane persons in the District of Alaska and for other purposes" provided in section 7 thereof as follows:

> That the schools specified and provided for in this Act shall be devoted to the education of white children and children of mixed blood who lead a civilized life. The education of the Eskimos and Indians in the district of Alaska shall remain under the direction and control of the Secretary of the Interior, and schools for and among the Eskimos and Indians of Alaska shall be provided for by an annual appropriation, and the Eskimo and Indian children of Alaska shall have the same right to be admitted to any Indian boarding school as the Indian children in the States or Territories of the United States.

The act of March 30, 1905 (33 Stat. 1156, 1188), made an appropriation—

> EDUCATION IN ALASKA: To enable the Secretary of the Interior, in his discretion and under his direction, to provide for the education and support of

the Eskimos, Indians, and other natives of Alaska; for erection, repair, and rental of school buildings; for text-books and industrial apparatus; for pay and necessary traveling expenses of general agent, assistant agent, superintendents, teachers, physicians and other employees, and all otber necessary miscellaneous expenses which are not included under the above special heads, fifty thousand dollars, to be immediately available.

The appropriation made by the act of June 30, 1906 (34 Stat. 697, 729), for $100,000 was "To enable the Secretary of the Interior in his discretion and under his direction, to provide for the education and support of the Eskimos, Aleuts, Indians, and other natives of Alaska."

Appropriations in increased amounts have since been made by Congress anually for the support of schools among the Eskimos, Aleuts, Indians and other natives of Alaska, the amount appropriated for that purpose for the fiscal year ending June 30, 1920, being $250,000. The act of May 27, 1908 (35 Stat. 317, 351), contains this additional provision—

That all expenditure of money appropriated herein for school purposes in Alaska shall be under the supervision and direction of the Commissioner of Education and in conformity with such conditions, rules, and regulations as to conduct and methods of instruction and expenditure of money as may from time to time be recommended by him and approved by the Secretary of tbe Interior.

All subsequent acts making appropriations for the support of schools among the natives of Alaska contain a like provision to the above.

The Territory of Alaska was created by the act of August 24, 1912 (37 Stat. 512), and it is provided in section 3 thereof that the authority granted therein to the legislature to alter, amend, modify, and repeal laws in force in Alaska, shall not extend to the act of January 27, 1905, *supra*, and the several acts amendatory thereof, which act provides that schools for and among the Eskimos and Indians of Alaska shall be *provided for* by an annual appropriation.

Section 415 of the Compiled Laws of Alaska provides: "The legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States."

The act of March 3, 1917 (39 Stat. 1131), reads as follows:

That the Legislature of Alaska is hereby empowered to establish and maintain schools for white and colored children and children of mixed blood who lead a civilized life in said territory and to make appropriations of Territorial funds for that purpose; and all laws or parts of laws in conflict with this Act are to that extent repealed.

Until that act was passed, as hereinbefore shown, the matter of schools for the children named therein was controlled by congressional legislation.

In later acts, notably that of May 24, 1922 (42 Stat. 552, 583), Congress went further and made and is still making appropriations "To enable the Secretary of the Interior, in his discretion and under his direction, to provide for the education and support of the Eskimos, Aleuts, Indians, and other natives of Alaska."

Two things are apparent from the foregoing, namely that the Indians and other natives of Alaska are as truly the wards of the Nation as are the aborigines and their descendants inhabiting the States with whom the Government has had to deal since its organization; and that Congress has assumed full cost for all educational facilities among the Alaskan natives. Under the act of March 3, 1917, *supra*, separate schools are in existence in Alaska, that is, those for the education of white and colored children and "children of mixed blood who lead a civilized life", established and maintained by appropriations from territorial funds; and those for the education of Eskimos, Aleuts, Indians, and other natives provided for by the annual appropriations of Congress.

The Solicitor for this department has held that the Territory of Alaska can not legally collect from Eskimos, Aleuts and other natives of Alaska of full blood nor of those natives of mixed blood who do not lead a civilized life, the school tax imposed by the territorial act. The case of *Davis* v. *Sitka School Board* (3 Alaska Reports 481), involved a construction of the act of January 27, 1905, *supra*, particularly that provision relating to "children of mixed blood who lead a civilized life." The court held that (p. 482)—

> * * * while the Davis children are of "mixed blood," they do not "lead a civilized life," within the meaning of section 7 of the act of Congress of January 27, 1905 (33 Stat. 617, c. 277), so as to entitle them to attend the public schools maintained for "white children and children of mixed blood who lead a civilized life." *Held*, that mandamus will not lie to compel the school board of Sitka to admit such children to the public schools therein; it appearing that the government maintained a separate school for Eskimos and Indians "under the direction and control of the Secretary of the Interior."

In the case of *United States* v. *Berrigam* (2 Alaska Reports 442), referring to the clause of the third article of the treaty of 1867 between Russia and the United States that "the uncivilized tribes (in Alaska) will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes of that country," it was held (syllabus)—

> That the Athapascan stock, including the native bands of the Tanana, belong to the uncivilized tribes mentioned in this clause. As such they are entitled to the equal protection of the laws which the United States affords to similar aboriginal tribes within its borders.

Also that (syllabus)—

All the vacant and unappropriated lands in Alaska at the date of the cession of 1867 by Russia became a part of the public domain and public lands of the United States.

And further that (syllabus)—

The uncivilized native tribes of Alaska are wards of the government. The United States has the right, and it is its duty, to protect the property rights of its Indian wards.

In the case of *Nagle* v. *United States* (191 Fed. 141), after referring to the act of May 17, 1884 *supra*, providing a civil government for Alaska, and to section 1891 of the United States Revised Statutes which provide that "The Constitution and all laws of the United States which are not locally inapplicable, shall have the same force and effect within all the organized territories, and in every territory hereafter organized as elsewhere within the United States," the court held "all laws of Congress of general application not locally inapplicable are in effect in Alaska." The court further held (syllabus)—

The provision of Act Feb. 8, 1887, c. 119, sec. 6, 24 Stat. 390, relating to allotments of lands to Indians in severalty, that "every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States and is entitled to all the rights, privileges and immunities of such citizen," is in effect in Alaska, and operates to make Indians therein who are descendants of the aboriginal tribes, born since the annexation of Alaska, but who have voluntarily taken up their residence separate and apart from any tribe and adopted the habits of civilization, citizens of the United States, and the sale of liquor to such an Indian does not constitute an offense under Alaska Code Cr. Proc. sec. 142, as amended by Act Feb. 6, 1909, c. 80, sec. 9, 35 Stat. 603 making it an offense to sell liquor to an "Indian," which term is defined to include the aboriginal races inhabiting Alaska when annexed to the United States, and their descendants of the whole or half blood "who have not become citizens of the United States."

The court also held, referring to the clause in article III of the Alaska treaty with Russia stipulating that the uncivilized native tribes of Alaska "will be subject to such laws and regulations as the United States may from time to time adopt in regard to aboriginal tribes in that country" (p. 142)—

* * * There can be no doubt that this stipulation relates to the Indian tribes in Alaska, and manifestly the treaty was designed to insure them like treatment, under the laws and regulations of Congress, as should be accorded Indian tribes in the United States.

It was argued in the *Nagle case*, *supra*, that because the Government has never treated with the Indian tribes in Alaska, therefore

it was not the intendment that general laws respecting Indians should extend to the Territory of Alaska. But the court said (p. 146)—

> * * * It should be borne in mind, however, that it has long since been declared to be the policy of Congress not to treat further with the Indians as tribes. Act March 3, 1871, c. 120, 16 Stat. 544, 566. Ever since the passage of that act, Congress has governed the Indians by law, and not by treaty, and the policy affords cogent reason why general laws should apply to individual Indians in Alaska as well as elsewhere.

It was held in the case of *United States* v. *Cadzow* (5 Alaska Reports 125), that the aboriginal tribes of Alaska have a right to occupy the public lands of the United States therein subject to the control of both the lands and the tribes by the United States; also that the uncivilized native tribes of Alaska are wards of the Government—the United States has the right, and it is its duty, to protect the property rights of its Indian wards.

There are provisions in each of the following acts designed to protect the Indians of Alaska in the use and occupancy of the lands held by them: acts of May 17, 1884 (23 Stat. 24), and June 6, 1900 (31 Stat. 321, 320), providing a civil government for Alaska; act of March 3, 1891 (26 Stat. 1095), repealing timber culture laws and for other purposes, and act of May 14, 1898 (30 Stat, 409, 412), extending the homestead laws and providing for right of way for railroads in the District of Alaska.

The act of May 17, 1906 (34 Stat. 197), is entitled "An Act authorizing the Secretary of the Interior to allot homesteads to the *natives* of Alaska." [Italics supplied.] This act authorizes the Secretary of the Interior in his discretion to allot not to exceed 160 acres of nonmineral land "to any Indian or Eskimo of either full or mixed blood who resides in and is a native of said district". It was held in the case of *Frank St. Clair* (52 L. D. 597, 599–600)—

> * * * This is a special act relating to Alaska natives and is clearly separate and distinct from the act of May 14, 1898 (30 Stat. 409), extending the homestead land laws of the United States to the district of Alaska.
>
> * * * * * * *
>
> The vacant and unappropriated lands in Alaska at the date of the cession of 1867 by Russia became a part of the public domain of the United States; and the Indians of Alaska are wards of the Government and as such are entitled to the equal protection of the laws applicable to Indians within the limits of the United States. *United States* v. *Berrigan* (2 Alaska Reports 442); *United States* v. *Cadzow* (5 Alaska Reports 125). The natives of Alaska are wards of the Government and under its guardianship and care at least to such an extent as to bring them within the spirit if not within the exact letter of the laws relative to American Indians, their relations are very similar and in many respects identical with those which have long existed between the Government and the aboriginal peoples residing within the territorial

limits of the United States (49 L. D. 592). The Indians and other "natives" of Alaska are in the same category as the Indians of the United States; from an early date, pursuant to the legislative intent indicated by Congress, this department has consistently recognized and respected the rights of the Indians of Alaska in and to the lands occupied by them. 50 L. D. 315; 51 L. D. 155; *Alaska Pacific Fisheries* v. *United States* (248 U. S. 78); *Territory of Alaska* v. *Annette Island Packing Co.* (289 Fed. 671).

The status of an applicant under the act of May 17, 1906, authorizing the Secretary of the Interior to allot homesteads to the natives of Alaska is analogous to section 4 of the act of February 8, 1887 (24 Stat. 388), which provides that an Indian who has settled upon public lands of the United States shall be entitled to have the same allotted to him in the manner as provided by law for allotments to Indians residing upon reservations. This, of course, involves separation and living apart from the tribe. A reservation allottee is not required to reside upon or improve the land allotted to him. The court took the position in the case of *Nagle* v. *United States* (191 Fed. 141), that said act, especially that section thereof which declares an Indian born within the Territorial limits of the United States who has taken up within said limits his residence separate and apart from the tribe to be a citizen is in effect in Alaska.

* * * * * * *

The allotment to an Indian or Eskimo under the act of May 17, 1906, creates a particular reservation of the land for the allottee and his heirs but the title remains in the United States. *Charlie George et al.* (44 L. D. 113), *Worthen Lumber Mills* v. *Alaska Juneau Gold Mining Co.* (229 Fed. 966).

See also the cases of *Charlie George et al.* (44 L. D. 113), and *Charley Clattoo* (48 L. D. 435).

The natives of Alaska do not for the most part live on reservations and very few have been created. However, the Attorney General and the courts have recognized that power exists to create Indian reservations as well as reservations for other public purposes. *Alaska Pacific Fisheries* v. *United States* (248 U. S. 78); *United States* v. *Leathers* (Fed. Cas. No. 15581, 26 Fed. Cas. 897, 6 Sawyer 17); and 17 Ops. Atty. Gen. 258.

The act of March 3, 1891 (26 Stat. 1095, 1101), authorizing the establishment of townsites in Alaska, the acquisition by individuals of limited areas for trade or manufacturing purposes, etc., expressly excepts "any lands * * * to which the natives of Alaska have prior rights by virtue of actual occupation." The act also set apart the Annette Islands as a reservation for the use of the Metlakahtla Indians who immigrated from British Columbia to Alaska, "and such other Alaskan natives as may join them." It has since been held that the reservation so created extends to and includes adjacent "deep waters." It was also held in *Alaska Pacific Fisheries* v. *United States* (248 U. S. 78, 88, 89)—

* * * The reservation was not in the nature of a private grant but simply a setting apart "until otherwise provided by law," of designated public property for a recognized public purpose—that of safeguarding and advancing a

dependent Indian people *dwelling within the United States.* See *United States* v. *Kagama,* 118 U. S. 375, 379, *et seq.; United States* v. *Rickert,* 188 U. S. 432, 437.

* * * * * * *

The purpose of creating the reservation was to encourage, assist and protect the Indians in their efforts to train themselves to habits of industry, become self-sustaining and advance to the ways of civilized life. True, the Metlakahtlans were foreign born, but the action of Congress has made that immaterial here.

And in the case of *Territory* v. *Annette Island Packing Company* (6 Alaska Reports 585, 601, 604)—

While it may be true, as urged by counsel for the Territory that the Matlakahtlans residing on the reserve are not a tribe of Indians in the sense used in the Constitution of the United States, yet they are, and always have been, recognized as members of the Indian race, and the dealings of the Government with them have been as if they were a dependent people. * * * * * * These people, residing on a reservation established on their behalf by Congress, which they were authorized to use in common, subject to such restrictions and regulations as the Secretary of the Interior might make, took, in my view, a status politically analogous to that of native Indians on reservations within the United States, and hence became wards of the Government. This view of the status of these people is borne out by the Supreme Court in *Alaska-Pacific Fisheries* v. *United States,* reported in 248 U. S. 78, 39 Sup. Ct. 40, 63 L. Ed. 138.

The court also held in that case (syllabus)—

* * * The contract of lease between the Secretary of the Interior and the Annette Island Packing Company, together with its cannery, fish traps, and property used on the reservation under the lease, constitute and are an instrumentality of the United States, used by it in the performance of its duties to its Indian wards, and are not subject to taxation by the territory of Alaska. The attempt of the territory to levy and collect taxes on the said property or the packing company is ultra vires and void. Decree in favor of defendant and intervener and against the territory.

See also *Alaska Pacific Fisheries* (240 Fed. 274); *Territory of Alaska* v. *Annette Packing Company* (289 Fed. 671).

By Executive order of February 27, 1915, the President withdrew "from disposal, and set apart for the use of the Bureau of Education" 25,000 acres, including both land and water, surrounding the village of Tyonek near the north end of Cook Inlet in Alaska. The primary object of the reservation was to enable the department through the Bureau of Education to maintain a school and otherwise care for, support and advance the interests of the aboriginal natives of the village mentioned whose main support was through hunting, trapping and fishing. The question was submitted by the officers of the Bureau of Education as to the authority for entering into a lease for the establishment of a salmon cannery at or near the village. In Solicitor's opinion of May 18, 1923 (49 L. D. 592), it was held

that such authority existed, reference being made to the similar case of the Metlakahtla Indians of Annette Islands where it was held that the Secretary of the Interior had the power to grant such a lease. *Territory of Alaska* v. *Annette Islands Packing Company* (289 Fed. 671). The Solicitor stated, among other things (p. 593)—

> The fundamental consideration underlying this question is the fact that these natives are, in a very large sense at least, dependent subjects of our Government and in a state of tutelage; or in other words, they are wards of the Government and under its guardianship and care. The relations existing between them and the Government are very similar and in many respects identical with those which have long existed between the Government and the aboriginal peoples residing within the territorial limits of the United States.

It was also held (syllabi)—

> By article III of the treaty of March 30, 1867, under which the Territory of Alaska was ceded to the United States, and by subsequent acts providing for their education and support, Congress has recognized the natives of Alaska as wards of the Federal Government, thus giving them a status similar to that of the American Indians within the territorial limits of the United States.
>
> While there is no specific statute relating to the subject, yet the inherent power conferred upon the Secretary of the Interior by section 441, Revised Statutes to supervise the public business relating to the Indians, includes the supervision over reservations in the Territory of Alaska created in the interest of the natives and the authority to lease lands therein for their benefit.

The Solicitor's opinion of March 12, 1924 (50 L. D. 315), had under consideration the status of the natives of Alaska with respect to the title to certain tide lands near Ketchikan. Reference was made in that connection to the provisions of the treaty of March 30, 1867, under which the Territory of Alaska was acquired by the United States as well as to the act of May 17, 1884 (23 Stat. 24), which virtually constitutes the organic act for the Territory of Alaska and which declares:

> That the Indians or other persons in said district shall not be disturbed in the *possession* of any lands actually in their use or occupation or now claimed by them but the terms under which such persons may acquire *title* to such lands is reserved for future legislation by Congress. [Italics supplied.]

The act of March 3, 1891 (26 Stat. 1095), as previously stated, excepts "any lands * * * to which the natives of Alaska have prior rights by virtue of actual occupancy." The act of May 14, 1898 (36 Stat. 409), extended the homestead laws of the United States to the Territory of Alaska and authorized the Secretary of the Interior to reserve for use of the natives of Alaska "suitable tracts along the water front of any stream, inlet, bay or seashore, for landing places for canoes and other craft used by such natives." Pursuant to this authority the Secretary on August 5, 1905, reserved the lands described as "all lands in the vicinity of the mouth of Ketchi-

kan Creek which lie between the lands occupied by the natives and the limits of low tide of Tongass Narrows."

It was held in the above Solicitor's opinion that "the tide or other lands occupied by or reserved for the Indians at Ketchikan, Alaska, can not be disposed of under existing law, but that power rests with Congress."

It was also stated in that connection (p. 317)—

> * * * From an early date, pursuant to the legislative intent indicated by Congress, this department has consistently recognized and respected the rights of the natives of Alaska in and to the lands occupied by them. See 13 L. D. 120; 23 L. D. 335; 24 L. D. 312; 26 L. D. 517; 28 L. D. 427; 37 L. D. 334.

See Solicitor's opinion of May 27, 1925 (51 L. D. 155), relative to the power of the Territorial Legislature to impose a tax upon reindeer held or controlled by the natives of Alaska. Reference was made to the case of *Territory of Alaska* v. *Annette Island Packing Company* (289 Fed. 671), which involved the question as to the authority of the Territory to tax the output of a salmon cannery under lease by the Secretary of the Interior to a packing company. It was held that the lease was an instrumentality of the Government to assist the Metlakahtla Indians to become self-supporting and hence the Territory of Alaska could not collect such a tax from the corporation.

It was held in the case of *Steamer Coquitlam* v. *United States* (163 U. S. 346, 352)—

> * * * Alaska is one of the Territories of the United States. It was so designated in that order and has always been so regarded. And the court established by the act of 1884 is the court of last resort within the limits of that Territory. It is, therefore, in every substantial sense the Supreme Court of that Territory. * * *

Under authority of the act of March 3, 1891 (26 Stat. 826), the Supreme Court of the United States in execution of this law by an order promulgated May 11, 1891, assigned the Territory of Alaska to the Ninth Judicial Circuit.

From the foregoing it is clear that no distinction has been or can be made between the Indians and other natives of Alaska so far as the laws and relations of the United States are concerned whether the Eskimos and other natives are of Indian origin or not as they are all wards of the Nation, and their status is in material respects similar to that of the Indians of the United States. It follows that the natives of Alaska, as referred to in the treaty of March 30, 1867, between the United States and Russia, are entitled to the benefits of and are subject to the general laws and regulations governing the Indians of the United States, including the citizenship act of June

2, 1924 (43 Stat. 253), as Alaska has been held to be one of the Territories of the United States. Under the terms of Article III of the cession treaty of March 30, 1867, the civilized natives of Alaska have all along been citizens of the United States.

Approved:

RAY LYMAN WILBUR,
Secretary.

TAXATION OF INCOME FROM MINERAL PRODUCTION FROM RESTRICTED LANDS OF MEMBERS OF FIVE CIVILIZED TRIBES

Opinion, February 26, 1932

STATUTORY CONSTRUCTION.

Where the general language of a statute is broad enough to include the subject matter, any intent to exclude a person or class of persons must be definitely expressed therein.

INDIANS—INCOME TAX.

Indians as well as other citizens must be regarded as subject to the revenue laws of the United States and of the States in which they reside unless the particular income sought to be reached has been exempted from taxation by some Congressional enactment or rule of law.

INDIAN LANDS—ALIENATION—INCOME—TAXATION.

Restrictions against alienation imposed against lands for the protection of Indians have uniformly been regarded as withdrawing the lands from taxation, and where the lands themselves are nontaxable the income derived therefrom is likewise exempt.

DOUBLE TAXATION.

Double taxation or unequal taxation, so long as the iuequality is not based upon arbitrary distinctions, is not repugnant to the Federal Constitution.

INDIAN LANDS—MINERAL LANDS—OIL AND GAS LANDS—INCOME—TAXATION—FIVE CIVILIZED TRIBES.

Section 3 of the act of May 10, 1928, subjected the income derived from mineral production from the restricted lands of the Five Civilized Tribes to both Federal and State taxation on and after April 26, 1931, except as to those lands allotted to members to which exemptions attached under provisions of the agreements under which allotted, such exemptions to continue for the periods specified irrespective of subsequent legislation by Congress purporting to subject them to taxation.

INDIAN LANDS—MINERAL LANDS—OIL AND GAS LANDS—INCOME—TAXATION—FIVE CIVILIZED TRIBES.

The Federal and State income tax to be levied upon the income derived from the mineral production from the restricted lands of the Five Civilized Tribes under section 3 of the act of May 10, 1928, is to be based upon the net income, that is the gross income less allowable deductions, accrued after April 26, 1931, and not to be confined to interest alone.